

REMARKS

Claims 12-14 are pending. By this amendment, claim 12 is amended and new claims 15-16 are added. No new matter is introduced. Support for the amendments and new claims may be found at least in original claim 3 and at page 6, lines 15-20, page 6, lines 22-31, page 7, lines 3-6, and page 9, lines 9-19 of the specification. Reconsideration and allowance of the claims in view of the above amendments and the remarks that follow are respectfully requested.

Claim Rejections Under 35 U.S.C. §102

On page 2 the Office Action rejects claims 12-14 under 35 U.S.C. §102 (a) over U.S. Patent 6,287,106 to Learn et al. (hereafter Learn). This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. Verdegaal Bros. v. Union Oil Co. Of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic Research & Foundation v. Genentech Inc., 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Learn is directed to an articulated mold cavity for injection molding a dispensing cap. The cavity includes a substantially hollow body adapted for attachment to a receptacle. The body includes an open first end shaped and dimensioned for coupling to the receptacle, a side wall and a substantially closed second end including a dispensing opening formed therein. The cap also includes a closure integrally formed with the body. As shown in Figures 6 and 7, and at column 8, lines 48-54, Learn's cavity includes "a dispensing opening 104 with a taper that opens as it extends toward the upper surface 98 of the flip top dispensing cap 26" (emphasis added). In other words, Learn's opening has an upwardly facing taper. See column 8, line 52.

Amended claim 12, to the contrary, recites "each aperture has a tapered surface boundary such that the aperture is smaller in size adjacent an upper side of the end wall whereby the plug is adapted to avoid frictional resistance with said aperture until a respective flap is near its close position" (emphasis added). The specification describes this feature at least at page 6, lines 22-31:

The dispensing apertures or holes 18, 23 are bounded by surfaces 36, 38 characterized by exaggerated draft-like configurations so that the apertures

are widest adjacent an upper surface 41 of the end wall 11. The apertures 18, 23 adjacent an inner surface or underside 42 of the end wall 11 have aperture surfaces 37, 39 more closely aligned or parallel with the axis of the cap at the center of the skirt 12. Theses narrow surfaces 37, 37 are the areas against which the plugs 26, 27 seal.

(Emphasis added). This configuration is advantageous because “[t]here is essentially no interference between the plug and aperture until the part of a plug distal from the flap engages the actual sealing area or surface 37, 39 of an aperture ... Sealing occurs only when the catch 48 or 49 is nearly locked onto its receiving area or structure 51 or 52 on the end wall. At other positions of a flap, there is essentially no frictional drag between the flap plugs 26, 27 and apertures 18, 23.” See page 9, lines 9-19 of the present application.

As noted above, Learn’s taper opens as it extends toward the upper surface. Therefore, Learn actually teach away from a mold cavity with an aperture that is smaller in size adjacent an upper side of the end wall, the feature recited in amended claim 12. Furthermore, Learn does not disclose or suggest avoiding frictional resistance with the aperture until a respective flap is near its closed position. Accordingly, Learn does not disclose or suggest all of the features of amended claim 12, and claim 12 is allowable.

Claims 13-14 are allowable at least because they depend from allowable claim 12 and for the additional features they recite. Withdrawal of the rejection of claims 12-14 under 35 U.S.C. §102 (a) is respectfully requested.

New Claims Are Allowable

New claims 15-16 are allowable at least because they depend from allowable claim 12 and for the additional features they recite. For example, new claim 15 recites “wherein the flap is releasably held in closed positions by depending catches that interact with complimentary receiving areas on the end wall.” In Learn’s mold cavity, “the dispensing opening 104 is defined by a tapered surface 126 that opens as it extends from the interior 128 of the body 114 to the upper surface 98 of the dispensing cap 26.” See Figures 6 and 7, and column 8, lines 32-34. “[T]he wall 130 presses outwardly upon the tapered dispensing opening 104, flexing the opening 104, to create a fluid tight seal between the flip top closure flap 102 and the tapered dispensing opening.” See Figure 8 and column 8, lines 60-64 of Learn. Therefore, Learn’s mold cavity has a single device that operates to hold the flap in closed position and to seal the flap. On the other hand, the method recited in new claim 15 includes depending catches that hold the flap in closed position and, as a separate device, hollow plugs that seal the flap. Since this feature is not disclosed or suggested by Learn, new claim 15 is allowable.

In view of the above remarks, Applicant's respectfully submit that the application is in condition for allowance. Prompt examination and allowance are respectfully requested.

Should the Examiner believe that anything further is desired in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

Date: June 10, 2005



Kelly T. Lee
Registration No. 47,743
Andrews Kurth LLP
1701 Pennsylvania Ave, N.W.
Suite 300
Washington, DC 20006
Tel. (202) 662-2736
Fax (202) 662-2739